

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

MATTHEW ROBERT YOUNG,

09-CV-1040-SU

Petitioner,

OPINION AND ORDER

v.

MARK NOOTH,

Respondent.

MATTHEW ROBERT YOUNG

# 6242666

TRCI

82911 Beach Access Rd

Umatilla, OR 97882

Petitioner, *Pro Se*

JOHN KROGER

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Attorneys for Respondent

**BROWN, Judge.**

This matter comes before the Court on Petitioner Matthew Robert Young's Motion (#46) for Relief from Judgment pursuant to FRCP 60(4). For the reasons that follow, the Court **DENIES** Petitioner's Motion.

On October 22, 2010, the Court entered a Judgment dismissing this matter without prejudice.

On December 3, 2010, Petitioner filed a Motion seeking an order allowing Petitioner until December 17, 2010, to file a Notice of Appeal.

On December 8, 2011, Petitioner filed a Motion for Relief from Judgment pursuant to FRCP 60(4).

On December 16, 2010, the Court granted Petitioner's Motion for an extension of time to file a Notice of Appeal and extended Petitioner's time to file the Notice to January 14, 2011.

On December 20, 2011, Petitioner filed a Notice of Appeal to the Ninth Circuit.

On December 23, 2010, Respondent filed a Response to Petitioner's Motion for Relief from Judgment.

The Ninth Circuit has made clear a district court does not have jurisdiction to address a Rule 60(b) motion for relief from judgment in a matter on appeal unless leave first is obtained from the Ninth Circuit Court of Appeals to consider the motion. *See, e.g., Williams v. Woodford*, 384 F.3d 567, 586 (9<sup>th</sup> Cir.

2004), and *Gould v. Mutual Life Ins. Co.*, 790 F.2d 769, 772-73 (9<sup>th</sup> Cir. 1986). As noted, this matter is currently pending before the Ninth Circuit and Petitioner has not obtained leave of the Ninth Circuit for this Court to hear his Motion for Relief from Judgment. This Court, therefore, does not have jurisdiction over Petitioner's Motion for Relief from Judgment. Accordingly, the Court **DENIES** Petitioner's Motion.

#### **CONCLUSION**

The Court **DENIES** Petitioner's Motion (#46) for Relief from Judgment pursuant to FRCP 60(4).

IT IS SO ORDERED.

DATED this 28<sup>th</sup> day of January, 2011.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge